

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

www.spb.ca.gov

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES

July 24, 2001

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member
Richard Carpenter, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. Board members Alvarado and Harrigan and staff met with the Department of Personnel Administration to further discuss issues concerning arbitration of disciplinary actions.
- B. Board staff met with a delegation from India (Including Lt. General Nath, Chairman of the Union Public Service Commission) to exchange information regarding civil service testing policies and procedures, automation, promotional practices,

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interjurisdictional exchanges and appeal procedures.

- C. The Executive Officer attended the National Association of State Personnel Executives meeting in Montana and will serve on the organizations Executive Committee.
- D. The Board's planning meeting is scheduled for the September 6-7 meeting.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Litigation:

- A. PECG v. State Personnel Board - The Court of Appeal, Third District, issued a published decision July 11, 2001, rejecting various constitutional challenges to the Career Executive Assignment, including arguments that the CEA statutes create an impermissible "special system within the civil service system or violated restrictions on :temporary appointments" within state service. Following their earlier published decision in Alexander v. State Personnel Board, the court held that the Board's old CEA regulation (which has been since amended to comply with Alexander) violated the constitutional requirement that civil service appointments result from "competitive examination" because it allowed for CEA selection by examination without scoring and ranking. The court held that transfers from one CEA position to another are valid, but held that transfers from a non-CEA position into a CEA position are not valid and must be made by competitive examination. Justice Scotland, dissenting, would affirm the judgment in its entirety, disagreeing that scoring and ranking are necessary components of a competitive examination and disagreeing that transfers from

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non-CEA to CEA positions require a competitive examination.

- B. Connerly v. State Personnel Board - The Court of Appeal, Third District, has scheduled oral argument for August 24, 2001 at 2:00 p.m. and has ordered all counsel to be present. The case challenges the validity of affirmative action statutes and regulations of several state entities, including those of the State Personnel Board in light of Proposition 209.
- C. Jones v. State Personnel Board (Youth Authority) - Case No. RCV 36076 - The superior court denied petition for writ of mandate, affirming the Board's decision sustaining demotion of a senior youth counselor who failed to notify incoming supervisor of a subordinate's whereabouts and who failed to notify superiors about evidence of a ward's escape plan.
- D. Dept. of Youth Authority (DYA) v. State Personnel Board (Michael E. Jackson)--DYA has filed an appeal challenging a trial court's denial of writ of mandate.
- E. State Personnel Board v. Dept. of Personnel Administration -- Hearing on the Board's suit challenging the validity of provisions of the Unit 11, 12 and 13 memoranda of understanding providing for binding arbitration of disciplinary actions has been continued to September 21, 2001.

4. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

- A. The Legislature passed the budget July 23, 2001, it is now on the Governor's desk.
- B. Assembly member Wayne has placed AB 619, which requires that a state employee appointed to any state scientist class have, at a minimum, a 4 year degree in a scientific discipline. The Bill is currently on the Senate inactive file. We will be

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working with the author and sponsor to resolve this issue administratively.

- C. Judy Balmain and Karen Brandt met with Roseanne McHenry who facilitates the CalFed Bay-Delta task force, to discuss the possibility of a Demonstration Project for managers and supervisors

BOARD ACTIONS

5. STATE PERSONNEL BOARD SUMMARY MINUTES OF JULY 10-11, 2001

ACTION: Adopted on July 24, 2001.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

6. ADMINISTRATIVE LAW JUDGE CASES

On July 24, 2001, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

PROPOSED DECISIONS

SPRING GARRETT, CASE NO. 01-1106

Appeal from official reprimand
Correctional Case Records Manager
Department of Corrections

ACTION: Official reprimand revoked

MANUEL MACIEL, CASE NO. 01-1035

Appeal from five-percent reduction
in salary for twelve months
Correctional Officer
Department of Corrections

ACTION: Five percent reduction in salary for twelve months revoked

DAVID STEEN, CASE NO. 00-1341B

Appeal from determination of benefits
after reinstatement

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Psychiatric Technician
Porterville, Developmental Center
Department of Developmental Services
ACTION: Additional benefits awarded

KENNETH L. JACKSON, CASE NO. 01-0959
Appeal from five-percent reduction in
salary for six months
Conservationist I
California Conservation Corps
ACTION: Five percent reduction in salary for six months
modified to five percent reduction in salary for 3 months

LAURA J. VERGERONT, CASE NO. 00-4099
Appeal from one-step reduction in
salary for twelve months
Electrician III
Chino, California Institution for Men
Department of Corrections at Chino
ACTION: One step reduction in salary for 12 months
revoked

DOUGLAS R. FORS, CASE NO. 00-3180
Appeal from dismissal
Caltrans Highway Maintenance Worker
Department of Transportation
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

VICKIE RUNYAN, CASE NO. 00-3936
Appeal from one-step reduction in
salary for one month
Communications Operator II
Department of California Highway Patrol
ACTION: One step reduction in salary for 12 months
revoked

GLENN FLEMING, CASE NO. 00-3709
Appeal from 60-calendar days suspension
Coordinator (Communications)
Office of Emergency Services
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

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MARJORIE LAWRENCE, CASE NO. 01-0322
Appeal from Official Reprimand
Teacher, (High School-GED)
Wasco, (Correctional Facility)
Department of Corrections
ACTION: Official reprimand revoked

GLORIA MOORE, CASE NO. 01-0111
Appeal from 10 working days suspension
Associate Accounting Analyst
Department of Transportation
ACTION: Ten working days suspension revoked

CHARLOTTE L. TUTTLE, CASE NO. 00-0280
Appeal of discrimination
Motor Vehicle Field Representative
Department of Motor Vehicles
ACTION: Discrimination complaint denied

MARK CHAMBERLAIN, CASE NO. 01-0740B
Appeal for back pay from constructive
leave of absence under Government Code
section 19574.5
Psychiatric Technician (permanent-intermittent)
Metropolitan State Hospital
Department of Mental Health
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

TONYA WILSON, CASE NO. 00-2745
Appeal from dismissal
Office Assistant (Typing)
Department of Youth Authority
ACTION: Dismissal sustained

NORMANDO CALIM, CASE NO. 01-0475
Appeal from dismissal
Psychiatric Technician Assistant
Developmental Center at Eldridge
Department of Developmental Services
ACTION: Dismissal revoked

DALE MERICLE, M.D., CASE NO. 01-0592
Appeal from 10 percent reduction

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in salary for six months

Physician and Surgeon

High Desert State Prison

Department of Corrections

ACTION: Ten percent reduction in salary for six months
revoked

DAVID RENTERIA, CASE NO. 00-1833

Appeal from ten working days suspension

Officer

Department of California Highway Patrol

ACTION: Ten working days suspension sustained

STASIA LESIEWSKA, CASE NO. 00-3019

Appeal from dismissal

Certified Nursing Assistant

Department of Veterans Affairs

ACTION: Dismissal modified to a ten working days
suspension

ARBITRATION

JOHN D. MURPHY, CASE NO. 01-1531

Appeal from five-working day suspension

Officer

California Highway Patrol

ACTION: Five-working day suspension sustained

PETITIONS FOR REHEARING

DAVID B. LEWIS, CASE NO. 00-3935P

Appeal from five-percent reduction

in salary for six months

Lead Groundskeeper

Department of Corrections

ACTION: Petition for rehearing filed by Appellant denied

CRAIG STEVENSON, CASE NO. 99-1388P

Appeal from C.E.A. termination

Chief Counsel

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Department of Veterans Affairs

ACTION: Petition for rehearing filed by Appellant denied

CHRISTY CRESPIAN, CASE NO. 00-2904P

Appeal from denial of reasonable
accommodation

Psychiatric Social Worker

Patton State Hospital

Department of Mental Health

ACTION: Petition for rehearing filed by Respondent
denied

7. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 17-20

8. WITHHOLD APPEALS

On July 24, 2001, the Board adopted the following
decisions presented by Laura Aguilera, Assistant
Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

PATRICK LOPEZ, CASE NO. 00-2903

Classification: Youth Correctional Officer

Department of the Youth Authority

ACTION: DENIED

GREGORY J. BIRCHFIELD, CASE NO. 00-2310

Classification: Fire Fighter I

Military Department

ACTION: DENIED

MICHAEL R. MAZON, CASE NO. 00-2953

Classification: Cadet, CHP

California Highway Patrol

ACTION: GRANTED

JOSEPH HAMMER, CASE NO. 00-4092

Classification: Correctional Officer

Department of Corrections

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ACTION: DENIED

TANISHIA HUBBARD, CASE NO. 00-4002
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

MICHAEL O. CARTER, CASE NO. 00-3834
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

WILLIAM JULKES, JR., CASE NO. 00-3987
Classification: Parole Agent I, Adult Parole
Department of Corrections
ACTION: DENIED

DANIEL L. KROLICK, CASE NO. 00-3860
Classification: Hospital Police Officer I
State Personnel Board
ACTION: DENIED

CLEMENTE MEJIA, CASE NO. 00-4080
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DANIEL B. MCAFEE, CASE NO. 00-3862
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

JANAI M. WATKINS-FRALEY, CASE NO. 00-3799
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JASON DANIEL SMITH, CASE NO. 00-4058
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

WENDY M. SLAUGHTER, CASE NO. 00-3969
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

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LARRY E. SWAFFORD, CASE NO. 00-3861
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DENNIS H. THORN, CASE NO. 00-3668
Classification: Communications Operator
California Highway Patrol
ACTION: DENIED

ERIC F. VANAKEN, CASE NO. 00-3785
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

WINSTON E. SORIANO, CASE NO. 00-3340
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

LETICIA ORTIZ, CASE NO. 00-3977
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

GRAYDON M. NUETZMAN, CASE NO. 00-3863
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

RAFAEL CASTRO, CASE NO. 00-4074
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

DUSTIN MCCOY, CASE NO. 00-3757
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

NICHOLAS S. THOMPSON, CASE NO. 00-3971
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

DAVID A. SNYDER, CASE NO. 00-3792
Hospital Police Officer I

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ACTION: DENIED

PATRICK S. FILER, CASE NO. 00-1918

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

DARREN T. WILSON, CASE NO. 00-4054

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

JOHN B. BACHER, CASE NO. 00-2572

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

MICHAEL R. HUMBLE, CASE NO. 00-0870

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

RON D. HYNDS, CASE NO. 00-3667

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

THERONE LATSON, CASE NO. 00-3618

Classification: Parole Agent I,

Adult Parole

Department of Corrections

ACTION: DISMISSED

9. MEDICAL APPEALS

On July 24, 2001, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

GREGORY BIRCHFIELD, CASE NO. 99-3160

Classification: Fire Fighter

Military Department

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ACTION: DENIED

MARK GANLEY, CASE NO. 01-0287

Classification: Cadet, CHP

California Highway Patrol

ACTION: DENIED

MERCEDES DIAZ, CASE NO. 01-1403

Classification: Cadet, CHP

State Personnel Board

ACTION: DISMISSED

LARAMIE MCALMOND, CASE NO. 01-1404

Classification: Cadet, CHP

State Personnel Board

ACTION: DISMISSED

RONNIE SMITH, CASE NO. 00-4322

Classification: Medical Technical Assistant, CF

State Personnel Board

ACTION: DISMISSED

10. NON-HEARING CALENDAR

On July 24, 2001, the Board adopted item "A". This item was presented by Karen Coffee, Chief, Personnel Resources and Innovations Division, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

A. ENVIRONMENTAL HEALTH SERVICES FUNCTION

Proposed resolution to transfer the Environmental Health Services function for Alpine and Mono counties to the California Department of Health Services.

11. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

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- (1) HOSPITAL ADMINISTRATOR, SECURE TREATMENT FACILITY, COALINGA
The Department of Mental Health proposes to allocate the above position to the CEA category.
The Hospital Administrator is a member of the Executive Activation Team assisting the Executive Director with policy formulation, staff development and overall implementation of the new Sexually Violent Predator, Secure Treatment Facility in Coalinga. The department indicates that the position is at the fourth organizational level and will report to the Executive Director.
- (2) EXECUTIVE DIRECTOR, SECURE TREATMENT FACILITY, COALINGA
The Department of Mental Health proposes to allocate the above position to the CEA category.
The Executive Director is responsible to oversee the critical functions of the implementation and administration of the new Sexually Violent Predator (SVP) Secure Treatment Facility (STF), Coalinga. The department indicates that the position is at the third organizational level and will report to the Deputy Director, Long Term Care Services.
- (3) LEGISLATIVE COORDINATOR
The Department of Water Resources proposes to allocate the above position to the CEA category.
The Legislative Coordinator has management responsibility for daily operation of the Legislative Office, develops the Department's energy and water policy when appropriate, makes daily policy decisions regarding legislative issues; advises the Deputy Director and Directorate on legislative matters impacting the Department's policies and programs. The department indicates that the position is at the third organizational level and will report to the Deputy Director for Legislation.
- (4) DEPUTY DIRECTOR, CHILD SUPPORT SERVICES DIVISION
The Department of Child Support Services proposes to allocate the above position to the CEA category. The Deputy Director position for

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the Child Support Services Division will be responsible for establishing policies and procedures for the child support programs in California and providing leadership to the county service providers. The department indicates that the position is at the second organizational level and will report to the directorate.

(5) CHIEF, ENFORCEMENT DIVISION

The Air Resources Board proposes to allocate the above position to the CEA category. The Chief of the Enforcement Division oversees all activities related to the Air Resources Board's enforcement program. The department indicates that the position is at the second organizational level and will report to the Executive Officer.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

(1) CHIEF INFORMATION OFFICER

The Department of Managed Health Care's request to allocate the above position to the CEA category has been disapproved, June 28, 2001.

(2) DEPUTY DIRECTOR, PROGRAM GRANTS AND RESEARCH DIVISION

The Board of Corrections' request to allocate the above position to the CEA category has been disapproved, June 29, 2001.

(3) CHIEF, RECREATION DIVISION

The Department of Parks and Recreation's request to allocate the above position to the CEA category has been approved June 22, 2001, for a period of 24 months.

C. REQUESTS TO REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND 1/1/99

None submitted.

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D. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO
REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND
1/1/99

- (1) SPECIAL ASSISTANT
The Department of Pesticide Regulations request
to refill the above position has been
disapproved, June 29, 2001.
- (2) CHIEF, POLICY, ADMINISTRATION AND INFORMATION
TECHNOLOGY BRANCH, LICENSING AND CERTIFICATION
PROGRAM
The Department of Health Services' request to
refill the above position has been disapproved,
June 28, 2001.
- (3) DIRECTOR, INFORMATION TECHNOLOGY AND SUPPORT
MANAGEMENT DIVISION
The Commission on Teacher Credentialing's
request to refill the above position has been
disapproved, June 28, 2001.

ACTION: Noted

A D J O U R N M E N T

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SUBMITTED

1. LIEM C. VU, CASE NO. 00-1743. Appeal from dismissal. Department of Veterans Affairs. (Oral argument held June 5, 2001).

NO ACTION

2. DUANE SCHNEIDER, CASE NO. 00-3561. Appeal from five working days suspension. Department of Motor Vehicles. (Oral argument held June 5, 2001).

NO ACTION

3. MICHAEL STATON, CASE NO. 99-3155. Appeal from discrimination complaint. Department of Justice (Oral argument held June 5, 2001).

NO ACTION

4. EVERETT DREW, CASE NO. 00-1480. Appeal from dismissal. Department of Corrections. (Oral argument held July 10, 2001).

NO ACTION

5. MITCHELL BLAIR, CASE NO. 99-0242. Appeal from dismissal. Department of the Youth Authority. (Oral argument held July 10, 2001).

NO ACTION

6. CHRISTINE SALAZAR, CASE NO. 99-5136. Appeal from reasonable accommodation. Employment Development Department. (Oral argument held July 10, 2001).

NO ACTION

7. CASSANDRA CLADDY, CASE NO. 00-3080. Appeal from five percent reduction in salary for five months. Employment Development Department. (Oral argument held July 10, 2001).

NO ACTION

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8. TINA GABRIALT, CASE NO. 00-2360. Appeal from dismissal. Human Services Agency, County of Merced. (Oral argument held July 10, 2001).

NO ACTION

9. RICHARD C. TOBY, CASE NO. 00-1572P. Appeal from dismissal. Department of Developmental Services. (Oral argument held July 10, 2001).

NO ACTION

10. CRYSTAL QUARTEY, CASE NO. 00-1276. Appeal from dismissal. Department of Veterans Affairs. (Oral argument held July 11, 2001).

NO ACTION

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NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending

before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional forty-five days, the Board hereby publishes its substantial reasons for the need for the forty-five day extension for some of the cases now pending before it for decision.

An additional forty-five days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than 6 months as of the date of the Board meeting.

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GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

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I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on July 24, 2001.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.